U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18289242

Date: AUG. 6, 2021

Appeal of California Service Center Decision

Form I-129, Petition for L-1B Specialized Knowledge Worker

The Petitioner, a [redacted] development enterprise, seeks to continue the Beneficiary's temporary employment as its "business systems analyst" under the L-1B nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).[1]

The California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary possesses specialized knowledge and was employed abroad and would be employed in the United States in a specialized knowledge capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we conclude that the Petitioner did not meet that burden. Therefore, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1B nonimmigrant visa classification, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a specialized knowledge capacity. Section 101(a)(15)(L) of the Act. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. BACKGROUND

The Petitioner is part of a [redacted] organization that designs, manufactures, and markets a range of [redacted] products and services. The Petitioner states that the Beneficiary was employed abroad as a business system analyst, the same as his proposed position in the United States, and that in order to succeed in that position, the job candidate "must possess a singular grasp of [its] proprietary internal finance tools, along with how these tools interact with the software required to push [its] business

[1] The Beneficiary was initially admitted to the United States in L-1B status under the Petitioner's blanket L petition with a three-year validity date of April 27, 2018 to April 26, 2021.

improvement." The Petitioner further states that it requires the services of "an elite group of financial experts" who have specialized knowledge and experience to work with its [redacted] product line." In an effort to show that the Beneficiary qualifies for the proposed position, the Petitioner points to the Beneficiary's education, which includes the U.S. equivalent of a bachelor's degree in computer engineering, and discusses the Beneficiary's employment with the foreign organization, where he is claimed to have acquired "expert-level command" of the organization's payroll processes and procedures. The Petitioner states that it will compensate the Beneficiary $132,102 annually in exchange for his "uncommon skills and specialized experience," which the Petitioner claims will make the Beneficiary a "leading asset" for the U.S. entity.

III. SPECIALIZED KNOWLEDGE

The primary issue in this matter is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether the Beneficiary has been employed abroad and will be employed in the United States, in a specialized knowledge capacity.

As a threshold issue, we must determine whether the Petitioner established that the Beneficiary possesses specialized knowledge. If the evidence is insufficient to establish that he possesses specialized knowledge, then we cannot conclude that the Beneficiary's past and intended future employment involve specialized knowledge.[2]

A beneficiary is deemed to have specialized knowledge if they have: (1) a "special" knowledge of the petitioning organization's product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the petitioning organization. Section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D). A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition.

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others. With respect to either special or advanced knowledge, the petitioner ordinarily must demonstrate that the beneficiary's knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

Special knowledge concerns knowledge of the petitioning organization's products or services and their application in international markets. To establish that a beneficiary has special knowledge, the petitioner may meet its burden through evidence that the beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry.

[2] The Petitioner does not claim that the Beneficiary was employed abroad in an executive or managerial capacity.

Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, the petitioning entity may meet its burden through evidence that the beneficiary has knowledge of or an expertise in the organization's processes and procedures that is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others.

Once a petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. We cannot make a factual determination regarding a given beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of its products and services or processes and procedures, the nature of the specific industry or field involved, and the nature of the beneficiary's knowledge. The petitioner should also describe how such knowledge is typically gained within the organization and explain how and when the individual beneficiary gained such knowledge.

In the present matter, the Petitioner submitted a supporting cover letter highlighting the Beneficiary's "expert knowledge of [the organization]'s business intelligence technologies, reporting technologies capabilities, relational databases, data warehouse platforms, and architecture tools" as well as his 11 years of "extensive background and specialized knowledge" in business analytics and payroll pay law, some of which the Beneficiary acquired prior to his employment with the Petitioner's foreign affiliate. Although the Petitioner also stated that the Beneficiary has "advanced technical skills and in-depth knowledge" of the organization's "database warehouse" and understands how the organization's "internal systems interface to [the Petitioner's] overall system of data architecture," the Beneficiary's knowledge was not identified as either "special," pertaining to the petitioning organization's products or services, or "advanced," pertaining to the organization's processes and procedures. The Petitioner also did not describe its organization's technologies, databases, platforms, or tools, nor did it explain why specialized knowledge is required to work with or use them. Likewise, although the Petitioner listed the Beneficiary's assigned job duties, it did not distinguish those duties as uncommon among other similarly situated professionals within the☐ industry or establish that they require knowledge that is further along or is more complex than the knowledge possessed by others within the organization.

The Petitioner also stated that the Beneficiary is able to "digest complex financial rules" and work within the context of its "complex structure." However, the Petitioner did not explain how its structure is complex or establish that specialized knowledge is required to understand and work within the context of this structure. In order to establish that the Beneficiary possesses specialized knowledge, the Petitioner must show that the knowledge pertains to the petitioning organization's products or services or to its processes and procedures. Here, the Petitioner did not establish that the "complex financial rules" that the Beneficiary is able to understand pertain specifically to the petitioning entity. Although the Petitioner claimed that the specialized knowledge in question pertains to its organization's "processes," thus indicating that the Beneficiary's knowledge is advanced, the Petitioner did not adequately describe those processes to support the claim that the Beneficiary's knowledge cannot be transferred without significant cost and loss of time, as claimed. The Petitioner also did not compare the Beneficiary's knowledge of its processes to the knowledge of other

employees within the company. As such, the Petitioner did not establish that the Beneficiary's knowledge is further along in progress, complexity, and understanding.

In a request for evidence (RFE), the Petitioner was asked to identify the Beneficiary's knowledge as either special or advanced and to compare his knowledge to that of other workers in the industry or within the employing entity.[3] The Petitioner was allowed the opportunity to provide evidence of the Beneficiary's training, work experience, or education showing the period of time he has been using or developing the claimed specialized knowledge.

In response, the Petitioner explained that the Beneficiary's knowledge pertains to the organization's "region specific processes" and requires the use of "a unique set of skills" that include a "deep knowledge" of the Petitioner's database warehouse and an understanding of how the organization's "internal systems interface to [its] overall system of data architecture." The Petitioner further stated that the Beneficiary's knowledge is at a level that is "not common within the company or the industry" and would take another individual three to four years to acquire. However, the Petitioner did not adequately describe the processes in which the Beneficiary is claimed to have specialized knowledge and therefore it did not explain how those processes are uncommon within the industry or establish that the Beneficiary's level of knowledge and understanding of those processes surpasses that of others within the organization.

Further, in a description of the skills and knowledge required for the proposed position, the Petitioner stated that the Beneficiary gained advanced knowledge of its "different Internal databases, Data Warehouse, and Business Objects" in the course of developing the "Order to Cash and Sales Finance" platform, which is used to support the Petitioner's "Rebates processes." However, the Petitioner did not elaborate on the complexities of the platform that the Beneficiary developed, nor did it clarify how developing this platform contributed to the specialized knowledge the Beneficiary is claimed to have acquired. Moreover, the Petitioner indicates that the Beneficiary developed this platform and gained the claimed advanced knowledge in the course of his U.S. employment. This undermines the claim that specialized knowledge was a prerequisite for such employment and that the Beneficiary possessed the required specialized knowledge at the time he was transferred to the United States. Although the Petitioner listed the Beneficiary's foreign job duties and stated that the Beneficiary's employment with the foreign affiliate resulted in his gaining an understanding of the organization's information security and global processes, the Petitioner did not provide a meaningful understanding of these processes, delineate a knowledge progression timeline, or otherwise explain when or how he gained the claimed specialized knowledge that is required for the U.S. position. Thus, despite claiming that the Beneficiary's foreign employment resulted in his "understanding" of the organization's technologies, databases, tools, and data platform, the Petitioner did not establish that such "understanding" rises to the level of specialized knowledge.

In a separate letter, the foreign entity's global manager stated that the Beneficiary "was responsible for building applications to support the finance organization" and "gained experience" in the following:

[3] Knowledge that is "special" must be distinct or uncommon in comparison to others in the industry, while knowledge that is "advanced" must be established as uncommon in the industry and it must be greatly developed or further along in progress in comparison to others within the employing entity. *See* USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.

1. Software Development;
2. Test/Test automation;
3. Infrastructure;
4. Information security processes and requirements;
5. Providing automation for Finance organization on a global scale;
6. Encryption service and methodology;
7. Database and Data Warehouse experience;
8. Data privacy and Legal guidelines;
9. LAMP Stack Development;
10. Python and PHP;
11. Teradata, Business Objects and Tableau Server.

The letter did not explain how gaining experience in these 11 elements amounted to specialized knowledge of the organization's products or services of its processes and procedures. Although the Petitioner claimed that the Beneficiary gained specialized knowledge while working for the foreign entity, it did not provide describe how the Beneficiary's knowledge progressed from the time he started his period of employment abroad to the time he attained a level of knowledge that is claimed to be specialized.

Furthermore, the Petitioner's response letter stated that the Beneficiary's employment abroad was for a 16-month period, from January 1, 2017 to May 8, 2018. This information is inconsistent with Section 1, No. 5 of the Form I-129 L Classification Supplement, which states that the Beneficiary's employment with the foreign affiliate commenced on January 11, 2016. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). This inconsistency regarding the duration of the Beneficiary's employment with the Petitioner's foreign affiliate further impedes our ability to gauge how and when the Beneficiary gained the knowledge that is claimed to be specialized.

On appeal, the Petitioner disputes the denial, referring to statements provided with the RFE response where it stated that the Beneficiary's knowledge is "distinct and uncommon" based on his "deep understanding of [the Petitioner]'s internal systems," his "understanding of [the company's] internal security processes and requirements, internal encryption service, and internal databases and data warehouses," and his "advanced experience" with the organization's reporting tools. The Petitioner does not, however, establish that the Beneficiary's "deep understanding" and "advanced experience" in these various elements is synonymous with specialized knowledge, nor does it resolve the inconsistency regarding the duration of the Beneficiary's employment abroad, a factor that is highly relevant to a determination of whether the Beneficiary was employed abroad in a specialized knowledge capacity for at least one year.

If, as stated by the foreign entity's global manager, the Beneficiary did not assume his foreign position until January 2017, this would indicate that it took the Beneficiary only 16 months to acquire and be employed in a specialized knowledge position. Not only would this undermine the Petitioner's claim that three to four years would be necessary to transfer the Beneficiary's specialized knowledge to another individual, but it would also call into question whether the Beneficiary was employed in a specialized knowledge capacity for at least one year prior to assuming his position with the U.S. entity.

That said, even if the Beneficiary's employment abroad commenced in January 2016, as claimed on appeal and in the L Classification Supplement, the total period of employment still would not have amounted to the three to four years the Petitioner claims is necessary to transfer the Beneficiary's claimed specialized knowledge to another individual.

Further, although the Petitioner claims that the Beneficiary assumed a "unique specialized knowledge position" during his employment abroad, it does not adequately support this claim. Instead, the Petitioner highlights the Beneficiary's role in the petitioning organization, pointing out that the Beneficiary is responsible for supporting the Petitioner's servers. The Beneficiary's significance, however, is not in dispute. Furthermore, the fact that the Beneficiary holds a significant position is not a factor in our determination as to whether he possessed the required specialized knowledge and was employed abroad in a position involving specialized knowledge for at least one year at the time of his transfer to the United States. Although the Petitioner claims that the Beneficiary acquired 11 years of "extensive background and specialized knowledge of both business analytics and payroll law," a considerable portion of that time was spent in other employment prior to the Beneficiary's joining the Petitioner's foreign affiliate. It is unclear how the education and experience gained prior to the Beneficiary's employment with the petitioning organization resulted in specialized knowledge that pertains specifically to this organization. As stated in the USCIS Policy Memorandum cited earlier, in order to establish that the Beneficiary possesses knowledge that is special, the knowledge must pertain to the petitioning organization's products or services; similarly, knowledge that is claimed to be advanced must pertain to processes and procedures that are specific to the petitioning organization. USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy, supra* at 7. Merely establishing that the Beneficiary has "an extensive background" in business analytics and payroll law is not sufficient to show that his knowledge pertains to the petitioning organization's products or services or to its processes and procedures and that it rises to the specialized level.

The Petitioner also argues that the Director applied a higher standard of proof in reviewing the evidence, asserting that it provided a "detailed job description describing specific tasks, the specialized knowledge involved, and percentage of time spent" and thereby established that the Beneficiary's position requires specialized knowledge. We disagree. Although the Beneficiary's job duties are relevant in determining whether the Beneficiary has specialized knowledge, as previously discussed, in order to establish that the Beneficiary has either special or advanced knowledge, the Petitioner must demonstrate that the knowledge required to perform those duties is not commonly held throughout the particular industry and that it could not be readily transferred to another individual with a similar educational and professional background. In addition, if claiming that the knowledge is advanced, the Petitioner must also demonstrate that the Beneficiary's knowledge pertains to its organization's processes and procedures and that it is further along in progress, complexity, and understanding in comparison to others within the same organization. *See id.* Here, although the Petitioner has claimed that the Beneficiary's knowledge "is at a level that is not common within the company or the industry," it has not supported this claim with a discussion of the knowledge possessed by others and an explanation of how the Beneficiary's knowledge is distinct among other company employees who work with the same employer's "proprietary systems and tools." The Petitioner must support its

assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Lastly, we acknowledge that the Department of State approved the initial request for L-1B classification submitted on behalf of the Beneficiary. Given the prior approval, we point to the following guidance:

> In adjudicating a request for extension of L-1B status, USCIS will take note of a previous determination of L-1B eligibility made by the Department of State or U.S. Customs and Border Protection, but will make a determination on the instant petition based on the record before it, consistent with the guidance provided in this memorandum.

USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy, supra* at 15. Further, each petition filing is a separate proceeding with a separate record. Therefore, in making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceedings. 8 C.F.R. § 103.2(b)(16)(ii). We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

Accordingly, in light of the evidentiary deficiencies described herein, the Petitioner has not established that the Beneficiary possesses specialized knowledge or that the Beneficiary was employed abroad and would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.